

### **REMARKS**

Applicants were requested to file a supplemental response including the remarks and observations made by Applicants during a recent discussion with the Examiner.

The Office Action mailed August 17, 2011 as to the allowed claim, claim 88, provides on page 4 thereof that neither reference shows both apertures as through apertures. As indicated by Applicants in the Response dated February 17, 2011, each of claims 80 and 87 were being amended so as to provide that the method claimed in all pending claims includes forming a through aperture in each of the adjacent bone segments.

Thus, Applicants respectfully submit that as the limitations of claim 88 were searched and considered and found allowable, it necessarily follows that addition of these limitations to claims 80 and 87 cannot involve additional search and consideration as the added limitations were previously searched.

In view of the indication of allowable subject matter as to claim 88, Applicants also respectfully submit that claims 80 and 87 are necessarily allowable as these claims now embody allowable subject matter. Therefore, the indication of allowable subject matter as to claim 88 also should apply to as-amended claims 80 and 87 as well as the claims dependent therefrom.

Thus and without agreeing with the rejection, Applicants believe that claims are allowable at least for this reason.

### **Double Patenting Rejection**

In a prior Office Action early in prosecution, claims 73-90 had been rejected for alleged non-statutory double patenting. More specifically these claims stood *provisionally* rejected on the grounds of nonstatutory obviousness type double patenting as being unpatentable over claims 1-61 of US Patent No. 6,607,530.

Without agreeing with this rejection, Applicants submit herewith a terminal disclaimer.

Applicants respectfully submit that this rejection has been overcome and should be withdrawn.

Applicant: Allen Carl, et al.  
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It is respectfully submitted that the subject application is in a condition for allowance.  
Early and favorable action is requested.

Applicants believe that additional fees are not required for consideration of the within Response. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 49386 CON (305538).

Respectfully submitted,  
Edwards Angell Palmer & Dodge, LLP

/ William J. Daley, Jr. /

Date: March 18, 2011

By: \_\_\_\_\_  
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